IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

ROBERT O. IDAHOSA,                          *

    Plaintiff,                          *

vs.                                         *
                                            CASE NOS. 4:20-CV-91 (CDL)
RYAN D. MCCARTHY, Secretary of    *                  4:20-CV-92 (CDL)
the Army, and UNITED STATES
DEPARTMENT OF THE ARMY,            *

    Defendants.                         *

O R D E R

On March 10, 2021, the Court entered orders concluding that Plaintiff's complaints in the above-captioned actions failed to state a claim.  The Court, however, found that Plaintiff should have an opportunity to cure the deficiencies in his complaints, and the Court ordered Plaintiff to file an amended complaint in the above-captioned actions by March 31, 2021.  Plaintiff did not file amended complaints by the deadline.  On April 5, 2021, the Court entered orders dismissing the two actions for failure to state a claim, and the clerk of the Court entered judgments against Plaintiff.  Plaintiff now seeks to set aside the judgments.  He also filed amended complaints in each action.

Although the clerk of the Court certified that copies of the Court's orders were mailed to Plaintiff on March 10, 2021 at the address that he provided to the Court, Plaintiff submitted affidavits stating that he never received the orders.  Idahosa Aff.

¶¶ 1, 6, ECF No. 20-1 in 4:20-cv-91 and -92.  He did, however, receive a copy of the Court's April 5, 2021 order and judgment at his address of record on April 29, 2021.  *Id.* ¶ 2.  Plaintiff immediately contacted the clerk of the Court to find out what happened, and he learned of the Court's March 10, 2021 order for the first time.  *Id.* ¶ 5.  Shortly after that, Plaintiff filed a motion to set aside the judgments (ECF No. 20 in 4:20-cv-91 and -92).  Plaintiff explained that he had received some but not all of the mail from the Court at his address of record, and he noted that there was a delay receiving the mail that actually did arrive.  Plaintiff asked the clerk to begin using his post office box and email address for service instead of the street address he had previously provided.

Plaintiff seeks to set aside the judgment under Federal Rule of Civil Procedure 60(b)(1), which provides that "the court may relieve a party . . . from a final judgment, order, or proceeding for the following reason[]: . . . mistake, inadvertence, surprise, or excusable neglect."  Plaintiff presented evidence that the reason for his delay in filing the amended complaints and seeking to set aside the judgments was that his mail did not arrive to his street address in a timely manner.  He did not know about the Court's order and thus could not comply with it by the deadline.  The delay was short and has little impact on the judicial proceedings, there is no indication that Plaintiff acted in bad faith, and the Government will not be prejudiced if Plaintiff's

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amended complaints are considered timely.  Accordingly, the Court finds that Plaintiff has demonstrated excusable neglect for his failure to comply with the deadline for filing his amended complaints.  The Court therefore sets aside the judgments entered on April 5, 2021.  The Court will consider the amended complaints filed on May 18, 2021 to be timely.  They are the operative complaints in these actions.  The Government shall answer or otherwise respond to the amended complaints by June 30, 2021.

Plaintiff asked the clerk to begin using his email address for service of documents in these two actions.  If Plaintiff wishes to receive electronic notice of filings, Plaintiff should review the "Pro Se Participants" section of the Court's CM/ECF Administrative Procedures, available at https://www.gamd.uscourts.gov/cmecf, and determine whether he wishes to participate in e-filing.  The Court notes that if a pro se party wishes to receive electronic notice, then the pro se party must also electronically file documents.  If Plaintiff does not register for electronic filing, then he will be served with documents at his post office box as he requested.

IT IS SO ORDERED, this 25th day of May, 2021.

s/Clay D. Land
CLAY D. LAND
U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA